



**STATE OF NEW JERSEY**

***Board of Public Utilities***

*Two Gateway Center  
Newark, NJ 07102*

TELECOMMUNICATIONS

IN THE MATTER OF THE PETITION FOR AN )  
ORDER AUTHORIZING EXARIO TELECOM, INC. )  
TO PROVIDE LOCAL EXCHANGE )  
TELECOMMUNICATIONS SERVICES )  
THROUGHOUT NEW JERSEY )

ORDER OF APPROVAL

DOCKET NO. TE01010069

(SERVICE LIST ATTACHED)

BY THE BOARD:

By letter dated January 24, 2001, Exario Telecom, Inc. (Petitioner or Exario) filed a petition with the Board of Public Utilities (Board) requesting authority to provide local exchange services throughout the State of New Jersey. Exario included a completed Staff questionnaire with its petition and responded to Staff interrogatories by letters dated August 8, 2001, August 14, 2001 and August 17, 2001.

According to the petition, Petitioner was incorporated under the laws of the State of Delaware on May 4, 2000. Petitioner's principal offices are located at 600 Parsippany Road, Parsippany, New Jersey 07054. Petition at 3.

Petitioner submitted copies of its Articles of Incorporation, Delaware Certificate of Good Standing and its New Jersey Certificate of Authority to Operate as a Foreign Corporation. Id. at 3, Exhibits A and B; August 17, 2001 letter. According to the petition, Exario was formed to provide local exchange services. Id. at 1. Petitioner advised that it is currently authorized to provide facilities-based and resold local exchange services in California, Pennsylvania and Texas. Exario advised that it has not been denied authority to provide telecommunications services in any state. In addition, Exario indicated that it has no pending civil, criminal or administrative actions against it. Exario advised that it is planning to initiate negotiations with Verizon New Jersey Inc. for an interconnection agreement.

In its petition, Petitioner advised that it seeks authority to offer local exchange services to both single and multi-line business customers throughout New Jersey using its own facilities. Exario will initially offer those services primarily to small and medium size business customers. Id. at 5; August 8, 2001 letter.

Petitioner requested a waiver of N.J.A.C. 14:1-4.3, which requires that its books and records be maintained in accordance with the Uniform System of Accounts (USOA).

Petitioner requested, in the interest of efficiency and to prevent undue burden, permission to maintain its books and records in accordance with Generally Accepted Accounting Principles (GAAP). Id. at 6.

Petitioner asserted that approval of its petition will further the public interest by expanding the availability of competitive telecommunications services in the State of New Jersey. Ibid. Petitioner also asserted that approval of this petition will provide New Jersey customers with access to new technologies and service choices and will permit customers to achieve increased efficiencies and cost savings. In addition, Petitioner stated that approval of its petition will enhance the telecommunications infrastructure in the State of New Jersey and will facilitate economic development. Ibid.

With regard to its technical and managerial qualifications, Exario stated that it possesses the technical capability and managerial qualifications to operate and manage its telecommunications operations in the State of New Jersey. Id. at 4. Petitioner submitted the professional biographies of its key personnel who, according to Exario, are well qualified to execute its business plans, and have extensive managerial and technical experience in the telecommunications industry. Id. at 4, Exhibit C.

Petitioner has submitted, as evidence of its financial qualifications, bank account statements of its parent corporation, Exario Networks, and pro forma income statements for its New Jersey operations. By letter dated October 10, 2001, the Division of the Ratepayer Advocate recommended approval of this petition.

## DISCUSSION

On February 8, 1996, the federal Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56, codified in scattered sections of 47 U.S.C. §151 et seq., was signed into law, removing barriers to competition by providing that:

[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

[47 U.S.C. §253(a)].

Therefore, Board approval of Petitioner's entry into the telecommunications marketplace is required, assuming Petitioner meets all other requirements, including, but not limited to, a demonstration of financial, technical and managerial integrity.

In considering this petition, the Board recognizes its obligation not to prohibit entry into intrastate telecommunications markets. 47 U.S.C. §253(a). Approval is also in keeping with the New Jersey State Legislature's decision that it is the policy of the State to provide diversity in the supply of telecommunications services, and its findings that competition will "promote efficiency, reduce regulatory delay and foster productivity and innovation" and "produce a wider selection of services at competitive market-based prices." N.J.S.A. 48:2-21.16(a)(4); N.J.S.A. 48:2-21.16(b)(1) and (3).

Therefore, having reviewed Exario's petition and the information supplied in support thereof, the Board FINDS that Petitioner has demonstrated that it possesses the requisite financial, technical and managerial resources, which are necessary to provide

telecommunications services in New Jersey. Accordingly, the Board HEREBY AUTHORIZES Petitioner to provide local exchange telecommunications services in New Jersey subject to approval of its tariff and the submission of pro forma balance sheets for the first two years of its New Jersey operations pursuant to N.J.A.C. 14:1-5.11(a)5. The Board notes that Petitioner will not be able to provide telecommunications services until a tariff is approved by the Board and the required financial statements have been provided.

Regarding the Petitioner's request for waivers of Board rules, the Board FINDS that the Petitioner has demonstrated good cause why the Board should grant relief from its requirements that Petitioner maintain its books and records under the USOA. The Board APPROVES Petitioner's request for the exemptions from maintaining its books and records under the USOA.

DATED: 10/15/01

BOARD OF PUBLIC UTILITIES  
BY:

(signed)  
CONNIE O. HUGHES  
PRESIDENT

(signed)  
FREDERICK F. BUTLER  
COMMISSIONER

(signed)  
CAROL J. MURPHY  
COMMISSIONER

ATTEST:

(signed)  
FRANCES L. SMITH  
BOARD SECRETARY